

“waiver” argument; Defendants argued that Doe, in her response to the motion to dismiss, abandoned her challenge to those two provisions because her response brief addressed only the third provision. Courts routinely hold that a plaintiff abandons claims in her complaint when she chooses not to defend them in response to a motion to dismiss. *See, e.g., Siepel v. Bank of Am., N.A.*, 239 F.R.D. 558, 566 (E.D. Mo. 2006), *aff’d* 526 F.3d 1122 (8th Cir. 2008) (“[B]ecause Plaintiffs utterly failed to address the arguments relating to the merits of the federal law claims, the Court dismisses those claims with prejudice.”). Defendants could not have made this argument in the motion to dismiss because Doe did not abandon those claims until she filed her response memorandum. Her request for a surreply in an attempt to undo that decision is unwarranted.

2. Second, Doe asserts that Defendants waited until their reply memorandum to point out that the Supreme Court recognized in *Gonzales v. Carhart*, 550 U.S. 124 (2007), that the fetus or embryo is a living member of the human species. Pl. Mot. 2. This is plainly incorrect. In their motion to dismiss, Defendants quoted *Gonzales* for the proposition that “[b]y common understanding and scientific terminology, a fetus is a living organism while within the womb, whether or not it is viable outside the womb.” Doc. 17 at 8 (quoting *Gonzales*, 550 U.S. at 147).

3. Third, Doe asserts that Defendants never argued that Doe failed to plead that her purported beliefs are both religious and sincere. But in their motion to dismiss, Defendants dedicated an entire section to arguing that “Doe has not alleged a religious exercise.” Doc. 17 at 11. Defendants specifically argued that “Doe has failed to allege, beyond conclusory statements, that her views are actually and sincerely religious, not

political.” *Id.* at 12. Moreover, Defendants’ argument in the reply memorandum that Doe must plead she has an honest religious belief directly responds to Doe’s assertion in her response brief that the existence of an honest religious belief is a question better left for trial. Doc. 20 at 3 & n.1. Defendants were entitled to respond to her argument.

CONCLUSION

For the reasons stated, no surreply is warranted, and the Court should deny Doe’s Motion for Leave to File a Surreply Brief and strike the accompanying brief.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 12, 2018, the foregoing was filed electronically through the Court's electronic filing system to be served electronically on all parties, and a true and correct electronic copy was further served by email on counsel for all parties.

/s/ D. John Sauer